

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 10-2150 JB

YOVANI TALAVERA-AYALA,

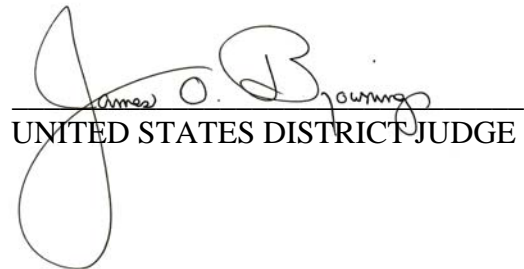
Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Defendant's Objections to the Presentence Report, filed October 7, 2010 (Doc. 20). The Court held a sentencing hearing on October 15, 2010. The primary issues are: (I) whether the Court should depart upward because of Defendant Yovani Talavera-Ayala's prior convictions for Homicide by Vehicle and for Leaving the Scene of an Accident Involving Death or Personal Injury, which would give a guidelines range of 24 to 30 months; (ii) whether the Court should sentence Talavera-Ayala to a sentence within the guideline range at offense level 9 and criminal history category IV, which gives a range of 12 months to 18 months; and (iii) whether the Court should grant Talavera-Ayala's request for a sentence of 12 months and 1 day. The United States Probation Office in its Presentence Report at paragraphs 47-50 recommended a four-level upward departure. The United States, however, had already given Talavera-Ayala the benefit of a Non-Standard Fast Track Plea Agreement. The United States also did not oppose Talavera-Ayala's request for a sentence of 12 months and 1 day. Furthermore, the United States affirmatively recommended that the Court impose a sentence of 12 months and 1 day. See United States' Response to Defendant's Objections to the Presentence Report Filed October

7, 2010 (Doc. 20) at 1-2, filed October 8, 2010 (Doc. 21). While the Court agrees that an upward departure is not warranted, because Talavera-Ayala remains within the heartland of immigration cases that the federal courts see, the Court gave some consideration to a sentence of 14 months, which was in the guidelines range. Under the parsimony clause, however, the Court is convinced that a low-end sentence is more appropriate. For reasons stated at the hearing and for other reasons consistent therewith, the Court will sustain Talavera-Ayala's Objections to the Presentence Report, and will impose a sentence of 12 months and 1 day.

IT IS ORDERED that Defendant Talavera-Ayala's Objections to the Presentence Report, filed October 7, 2010 (Doc. 20) are sustained. The Court will commit Talavera-Ayala to the custody of the Bureau of Prisons for a term of 12 months and 1 day, and will place Talavera-Ayala on supervised release for a term of 3 years.



UNITED STATES DISTRICT JUDGE

Counsel:

Kenneth J. Gonzales
United States Attorney
Lynn Wei-Yu Wang
Assistant United State Attorney
Albuquerque, New Mexico

Attorneys for Plaintiff

Thomas B. Jameson
Assistant Federal Public Defender
Albuquerque, New Mexico

Attorney for Defendant